

Its Attorneys

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

TiVo Inc.

Petition for Waiver of Sections 15.118(b),
15.123(b)(1), and 15.123(c) of the
Commission's Rules

MB Docket No. 11-105

To: The Secretary's Office
Attn: The Media Bureau

REPLY COMMENTS OF TIVO, INC.

TiVo Inc. ("TiVo"), by its attorneys and pursuant to Section 629(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 629(c), and Sections 1.3, 76.7, and 76.1207 of the rules of the Federal Communications Commission (the "Commission"), 47 C.F.R. §§ 1.3, 76.7, and 76.1207, hereby submits these Reply Comments in the above-captioned proceeding.

TiVo's pending Petition for Waiver (the "Petition") of Sections 15.118(b), 15.123(b)(1), and 15.123(c) of the Commission's "Digital Cable Ready" rules asks only that TiVo be permitted to offer retail customers the same choices in digital video recorder ("DVR") products that multichannel video subscribers already may obtain directly from multichannel video programming distributors ("MVPDs"). As the Petition demonstrates, and as all parties in this proceeding agree, expeditiously granting TiVo's requested waiver would significantly advance longstanding congressional and Commission policies to promote digital innovation, consumer choice, and retail competition in the navigation devices market. Allowing TiVo to market the Premiere Elite would fulfill all of these goals by providing retail consumers with an exciting new four-tuner, all-digital DVR that incorporates increased recording capability, increased capacity (300 hours of high definition programming), and reduced power consumption, and would give

consumers a retail alternative to the all-digital set-top boxes they currently can only lease from their local MVPDs. Given the business realities and time constraints associated with marketing, advertising, distribution, sales force training, and customer service issues inherent in the deployment of a new retail product such as the Premiere Elite, TiVo respectfully requests that the Commission act to grant the requested waiver as soon as possible.

Cable operators, equipment manufacturers, and consumers, including both the National Cable and Telecommunications Association and the Consumer Electronics Association, among others, unanimously support the relief TiVo is requesting.¹ Industry commenters agree that granting the waiver will “advance the goals of Section 629,”² that “[t]he time is again right for relaxing strict technical adherence to rules crafted in 2003,”³ that “[t]echnological innovation . . . should not be constrained by ‘one size fits all’ regulations written for an earlier time,”⁴ and that “TiVo’s voluntary commitments to inform consumers and minimize the purchase of products that are incompatible with a consumer’s cable service serve the [Commission’s] goals, ultimately increasing consumer choice and value.”⁵

Consumers, moreover, enthusiastically support and eagerly await the availability of TiVo’s Premiere Elite DVR. Consumer commenters observe that they “already fully understand the limitations of the TiVo Premiere Elite with respect to tuning of analog channels,”⁶ state that

¹ See Comments of the National Cable & Telecommunications Association, MB Docket No. 11-105, filed July 25, 2011, at 1 (“NCTA Comments”); Comments of the Consumer Electronics Association, MB Docket No. 11-105, filed July 25, 2011, at 1 (“CEA Comments”); Comments of NagraVision, MB Docket No. 11-105, filed July 25, 2011, at 2 (“NagraVision Comments”); Comments Transparent Video Systems, Inc., MB Docket No. 11-105, filed July 25, 2011, at 2 (“Transparent Video Systems Comments”); Comments of MegaZone, MB Docket No. 11-105, filed July 25, 2011, at 1 (“MegaZone Comments”); Comments of Samuel J. Biller, MB Docket No. 11-105, filed July 25, 2011, at 2 (“Biller Comments”); Comments of Glenn Connery, MB Docket No. 11-105, filed July 25, 2011, at 1 (“Connery Comments”).

² CEA Comments at 1.

³ NCTA Comments at 2.

⁴ *Id.* at 3.

⁵ CEA Comments at 2.

⁶ Biller Comments at 1.

they “have no need for an Analog tuner,”⁷ and “would be very interested in upgrading to the TiVo Premiere Elite four-tuner DVR.”⁸ Consumers understand that the “addition of an internal or external analog tuning requirement would potentially delay the retail availability of the TiVo Premiere Elite and raise the cost of the product with zero additional benefit [to consumers].”⁹ Consumers also understand that “[i]t would be unfair to companies like TiVo to require analog support in retail Digital Cable Ready products when the MVPDs . . . are able to provide customers with digital-only set top boxes.”¹⁰ Consumers, therefore, urge the Commission “to allow [TiVo] to bring this innovative product to market”¹¹ and to grant the waiver “as expeditiously as possible” to “provide the general public with a higher quality and less expensive alternative to . . . proprietary leased devices.”¹²

Beyond the legal, policy, and factual demonstrations set forth in the Petition, little else need be added to the unanimous support expressed by interested parties. NCTA acknowledges TiVo’s commitments for using marketing, training, and return policies to direct sales to consumers who are aware that the Premiere Elite is designed for use on all-digital or digital simulcast systems.¹³ Although comments submitted by consumers in this proceeding demonstrate that they already aware of the Premier Elite’s capabilities, TiVo reiterates its commitment to undertake vigorous customer and retailer education efforts designed to ensure that consumers recognize the capabilities of the Premiere Elite and purchase it only where it will be deployed in a compatible digital cable system.¹⁴ Those commitments include: (i) marketing

⁷ *Id.*

⁸ MegaZone Comments.

⁹ *Id.*

¹⁰ MegaZone Comments. *See also* Connery Comments.

¹¹ *Id.*

¹² Biller Comments at 2.

¹³ NCTA Comments at 3. TiVo agrees with NCTA that the waiver should not impose new duties on MVPDs “to change the networks, services, or prices” in response to the new functionality offered by the Premiere Elite. *Id.*

¹⁴ *See* Petition at 8-10.

the Premier Elite to customers in all-digital cable systems and systems that offer a digital simulcast of their analog signals; (ii) marketing the Premier Elite primarily through its custom install, high-end retail, and TiVo.com channels, which will verify that customers have all-digital service or digital simulcast service and are fully aware of the Premiere Elite's capabilities before purchase; (iii) developing clear and easily understood point-of-sale disclosures and retailer scripts; (iv) working to educate any retailers as well as cable operators about the Premiere Elite's functionality; and (v) offering free return or exchange for a TiVo product that includes analog functionality to any customer that mistakenly purchases a Premiere Elite for use in an analog cable system. TiVo's commitments to consumer education and support should dispel any potential concerns regarding whether the requested waiver serves the public interest.

Nagravision and Transparent Video Systems request that the Commission not only grant TiVo's Petition, but also grant a waiver "to all similar products under similar conditions."¹⁵ TiVo does not object to that outcome, but consideration of this broader request should not delay the grant of a waiver to TiVo, which already demonstrated that a waiver here is justified and in the public interest. The Commission should grant TiVo's Petition immediately and consider other, subsequently filed Petitions for similarly situated products where petitioners make similar commitments regarding education, marketing, training, and return policies. This essentially is the successful approach the Commission followed in connection with waivers of the Section 76.1204 "integration ban" for one-way, low cost, limited capability set top boxes.¹⁶ Regardless of the approach the Commission adopts for subsequently filed waiver requests, however, TiVo respectfully requests that the Commission grant the pending waiver request as soon as possible.

¹⁵ Nagravision Comments at 2; *see also* Transparent Video System Comments at 6.

¹⁶ *See, e.g., Evolution Broadband, LLC's Request for Waiver of Section 76.1204(a)(1) of the Commission's Rules*, 24 FCC Rcd 7890, 7897, at para. 15 (2009). Only after substantial experience with this approach did the Commission extend the waiver to all similar products. *See Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment, Third Report And Order And Order On Reconsideration*, 25 FCC Rcd 14657 at para. 49 (2010).

Expeditious grant of TiVo's request is particularly appropriate in this case because time is of the essence as TiVo seeks to expand the consumer market for an all-digital DVR. TiVo urges the Commission to consider the business realities that TiVo will face in marketing, advertising, distributing, and sales force training in connection with deploying a new retail product such as the Premiere Elite. For example, in the high-end retailer outlets where TiVo will be focusing its retail marketing efforts, distributors are more discriminating regarding their stock, select products less frequently, and require far more lead time for point-of-sale materials and sales force training. In addition, the trade show for the custom installers to whom TiVo will be directing another substantial portion of its marketing efforts, known as the CEDIA show, begins on September 7, 2011.¹⁷ TiVo's window of opportunity to stimulate demand from retailers and custom installers, therefore, is short and imminent. Given these factors, TiVo must be prepared to commence shipping the Premiere Elite and associated sales and training materials by no later than mid-September to place the Premiere Elite in retail outlets by mid-October. Otherwise, the Premiere Elite may be unavailable to consumers in time for the important holiday sales season.

Under these circumstances, and bearing in mind both the important policy considerations and the expedited process contemplated by Section 629 of the Act, TiVo requests that the Commission accelerate its decision making process here and allow TiVo to bring the benefits of superior technology to the retail navigation devices market as soon as possible. An expeditious grant would be consistent with the requests of consumers in this proceeding, and, as demonstrated in the Petition, with the public interest and the long-standing but elusive policies embodied in Section 629 of the Communications Act.¹⁸

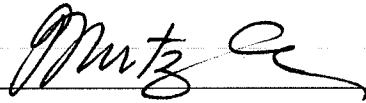
¹⁷ "CEDIA" is the acronym for Custom Electronic Design & Installation Association, and its annual EXPO is being held in Indianapolis from September 7-10, 2011. See <http://www.cedia.net/> (last visited Aug. 4, 2011).

¹⁸ 47 U.S.C. § 549.

CONCLUSION

As demonstrated in the Petition and unanimously supported by industry and consumers in this proceeding, the important policies that grant of the requested waiver would further and TiVo's commitment to ensuring that consumers are fully informed about the Premiere Elite's capabilities demonstrate that an expeditious waiver of Sections 15.118(b), 15.123(b)(1), and 15.123(c) would better serve the Commission's policies and the public interest than strict adherence to the rules. The Commission, therefore, should grant the Petition forthwith.

Respectfully submitted,



TiVo Inc.

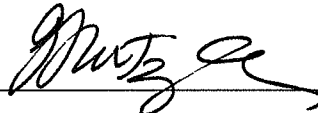
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August 9, 2011

Verification

To the best of my knowledge, information and belief formed after reasonable inquiry, these Reply Comments of TiVo, Inc. are well grounded in fact and are warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and are not interposed for any improper purpose.



Gary S. Lutzker

August 9, 2011

CERTIFICATE OF SERVICE

I, Rayya Khalaf, a secretary at the law firm of Dow Lohnes PLLC, certify that on this 9th day of August 2011, I caused the foregoing Reply Comments of TiVo, Inc. to be served by first class U.S. mail, postage prepaid, except where hand delivery is indicated, on the following:

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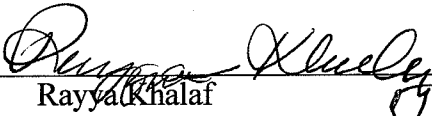
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